

**In the High Court of Punjab and Haryana at Chandigarh**

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**CWP-34886-2019 (O & M)**  
**Date of Decision: May 27, 2022**

**NARESH KUMAR AND ANR**

**.....PETITIONERS**

**VERSUS**

**STATE OF HARYANA AND OTHERS**

**....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr.Anurag Goyal, Advocate for the petitioners.

Mr. Anant Kataria, DAG, Haryana for respondent No.1.

Mr. R.K. Malik, Senior Advocate with  
Mr. Varunveer Chauhan, Advocate for respondent No.3.

Mr. Padamkant Dwivedi, Advocate for respondent No.2.

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**ANUPINDER SINGH GREWAL, J (ORAL)**

1. The petitioners have sought a writ in the nature of certiorari for setting aside the orders dated 18.11.2019 (Annexures P-17 and P-18) whereby respondent No.3 has been promoted to the post of Executive Engineer (Civil). They have also sought a writ in the nature of quo warranto against the promotion of respondent No.3 being in violation of Section 6(a)(proviso) of Haryana Service of Engineers, Group-A, Public Works (Building and Roads) Department Act, 2010 (for short - '2010 Act').

2. Learned counsel for the petitioners submits that petitioners, who were appointed as Assistant Engineer (Civil) in the year 2009, had completed 08 years of service in January/February, 2017 and passed the departmental examination. Respondent No.3 has been promoted as Executive Engineer in

violation of proviso to Section 6(a) of the 2010 Act wherein it is stipulated that a person, who has obtained the degree of Civil Engineering through distance education mode would not be eligible for promotion. Respondent No.3 has obtained the degree in Engineering through distance education from JRN Rajasthan Vidyapeeth University, which is not recognized by UGC and AICTE. He has cited the judgment of **Orissa Lift Irrigation Corporation versus Rabi Sankar Patro and others**, (2018) 1 Supreme Court Cases 468, wherein in para 12 name of the institution is specified and it is also mentioned that it is authorized to run social work, education, arts and commerce. It was also noticed that despite the institution being authorized to run the afore-noted courses, the University has been imparting degrees in technical education for which it was not authorized to do. He also submits that the benefit of the judgment of **Orissa Lift Irrigation Corporation (Supra)** has been granted as a one-time measure for not taking away the benefits, which the petitioners therein had already acquired. In the instant case, respondent No.3 had not derived any advantage at that time and in terms of the aforementioned 2010 Act, respondent No.3 was not eligible for promotion and, therefore, the question of protecting his right for promotion would not arise. He further submits that the Supreme Court had clarified in the contempt petition i.e. **Ashok Kumar and others versus Depinder Singh Dhesi and others**, (2019) 8 Supreme Court Cases 280 that if a candidate had not obtained any particular status as on the date of the judgment in **Orissa Lift Irrigation Corporation (Supra)**, it would not confer any additional advantages.

3. Learned Senior counsel for respondent No.3, however, submits that respondent No.3 had qualified AICTE examination which had been conducted

in pursuance to the directions of the Supreme Court in **Orissa Lift Irrigation Corporation (Supra)** and, therefore, the degree stood validated. He also submits that respondent No.3 had earlier approached this Court by preferring a petition i.e. CWP-15649-2012, which was disposed of by the Coordinate Bench of this Court on 11.09.2019 after the State counsel had submitted that the degree acquired by respondent No.3/petitioner therein would be considered and a direction was issued to the competent authority to pass a speaking order after considering objections of the affected parties. Respondent No.3 in the course of these proceedings has now retired and, therefore, the benefits which had already been granted to him by way of promotion to the post of Executive Engineer (Civil) should not be taken away at this stage. He has referred to the judgment of the Supreme Court in the case of **Parveen Gera versus Haryana State Electricity Board and others**, Civil Appeal No.7076 of 2010 decided on 13.09.2017 wherein petitioner had already retired and the Supreme Court had directed that the advantages which had already been given to him should not be taken away. He has also referred to the interim orders of the Coordinate Bench of this Court passed in CWP-31313-2019 titled as **Ram Raj Sharma versus Haryana Vidyut Prasaran Nigam Limited** and CWP-31329-2019 titled as **Tara Chand versus Haryana Vidyut Prasaran Nigam Limited** on 30.10.2019 in this regard. Learned Senior counsel also submits that Section 6 of the 2010 Act is also under challenge in a writ petition which is pending adjudication.

Heard.

4. The petitioners are stated to have obtained degrees in Civil Engineering. Petitioner No.1 has done B.Tech in Civil Engineering from

Regional Engineering College, Kurukshetra while petitioner No.2 has done B.Tech in Civil Engineering from Punjab Engineering College, Chandigarh. Respondent No.3 had done diploma in Engineering and had joined the service as Supervisor in 1991. He was promoted as Junior Engineer on 04.04.1995 and as Assistant Engineer on 02.05.2005. Petitioner No.1 was appointed as Assistant Engineer on 23.01.2009 while petitioner No.2 was appointed as Assistant Engineer on 06.02.2009.

5. The State of Haryana had enacted the Haryana Service of Engineers, Group-A, Public Works (Buildings and Roads) Department Act, 2010, vide notification dated 04.11.2010. Section 6 of the 2010 Act lays down the qualification of appointment and in the proviso, it has been stipulated that no degree obtained through correspondence or distance education mode shall be considered for appointment by any mode of recruitment. Section 6 of the Act is reproduced hereunder:-

*“6. No person shall be appointed to the Service on or after the date of publication of this Act in the Official Gazette, unless he-*

*(a) in case of appointment by direct recruitment, possesses one of the degrees or other qualifications in the respective engineering discipline from a university or from a technical institution approved by All India Council of Technical Education or has passed sections A and B of the Associate Membership Examination of the Institution of Engineers (India). The requisite qualifications shall be possessed by the candidate on or before the last day of submission of application to the Commission:*

***Provided that no degree obtained through correspondence or distance education mode from***

***any university or technical institution shall be considered for appointment by any mode of recruitment to the service. The degrees awarded must be approved by All India Council of Technical Education:***

*Provided further that the candidates to be appointed for Civil cadre shall be recruited with qualification in Civil Engineering, whereas those to be recruited in the Electrical cadre shall possess qualification in Electrical Engineering and whereas those to be recruited in Mechanical cadre shall be required to possess qualification in Mechanical Engineering;*

*(b) In case of an appointment by promotion from Group B service has in addition to the qualifications provided in Clause (a), eight years completed service and passed the departmental examination of Group B Service;*

*Provided that the Government may relax the Condition of eight years service in the case of an officer who has completed five years service and in such case, the officer shall earn the first increment as an Executive Engineer on the completion of nine years service.*

*Explanation.- For the purpose of computing eight years service, the service in Group-B, as well as in Group-A, shall be counted;*

*(c) is a person with a satisfactory character and antecedents, verification in respect of which shall be arranged through appropriate Government agency, except in case where such verification may have already been made at the time of his entry into Government service;*

*(d) has not more than one wife living or, in the*

*case of a Woman, is not married to a person already having a wife living:*

*Provided that the Government may, if satisfied that there are special grounds for doing so, exempt any person from the operation of this condition;*

*(e) obtains from the Standing Medical Board, a certificate of physical fitness after being examined in accordance with the Punjab Civil Services Rules as applicable to the State of Haryana and is considered by the Standing Medical Board to be fit in all respects for active outdoor duties.” (Emphasis Supplied)*

6. It is thus manifest in the proviso to Section 6 of the 2010 Act that a degree obtained through distance education would not be considered for appointment by any mode of recruitment.

7. In terms of Section 9 of the Act, promotion has to be made by selection on the basis of seniority-cum-merit. It is also provided that for being eligible for promotion to Group A, a member of the Group B service should have one of the degrees of a University or other qualification as specified in Section 6 of the 2010 Act. Section 9 which governs the promotion within service is reproduced hereunder:-

*“9. Promotion within service. - (1) Subject to the provisions of sub-sections (2) and (3), members of the Service of the respective cadre shall be eligible for promotion to any of the posts within their respective cadre:*

*Provided that a member of Group B Service who does not possess one of the degrees of a university or other qualifications as specified in section 6, shall not be eligible for promotion to the post of Executive Engineer till he has acquired the requisite qualifications:*

*Provided further that promotion to the post of*

*Engineer-in-Chief shall be made from amongst the members of the Civil cadre only:*

*Provided further that there shall be one common post of Chief Engineer for Electrical and Mechanical cadres and the same, notwithstanding anything contrary contained in this Act, shall be filled up by the Committee constituted under section 8 on the basis of seniority-cum-merit and the seniority inter-se Superintending Engineer, Electrical and Mechanical cadres for this purpose shall be determined on the basis of length of Service on the post of Superintending Engineer.*

*(2) Promotion shall be made by selection on the basis of seniority-cum-merit and suitability in all respects and a member of the Service shall not have any claim to such promotion as a matter of right or mere seniority.*

*(3) A member of the Service shall not be eligible for promotion to the rank of -*

*(a) Executive Engineer, unless he has rendered five years Service as an Assistant Executive Engineer and has passed departmental examination as provided in section 15:*

*Provided that an officer who has rendered six years or more Service as an Assistant Executive Engineer shall, unless he is considered unsuitable for promotion, be given preference for such promotion over an eligible Group B officer;*

*(b) Superintending Engineer, unless he has rendered seven years Service as an Executive Engineer;*

*(c) Chief Engineer, unless he has rendered three years Service as Superintending Engineer;*

*(d) Engineer-in-Chief, unless he has rendered two years Service as Chief Engineer:*

*Provided that if, it appears to be necessary to promote an officer who has successfully completed his probation, in public interest, the Government may, for reasons to be*

*recorded in writing, either generally for a specified period or in any individual case, reduce the period specified in clauses (a), (b), (c) or (d) to such an extent, as it may deem proper.”*

8. The post of the Assistant Engineer is a Group B post while the post of Executive Engineer is a Group A post. Therefore, for a member of a Group B service to be eligible for promotion, he has to satisfy the requirements of Sections 6 and 9 of the 2010 Act. Respondent No.3 has obtained a degree from JRN Rajasthan Vidyapeeth University through distance learning. It is also stated by the respondent that this degree has neither been recognized by the UGC nor by the AICTE and, therefore, this degree by itself from this institution cannot be considered while considering respondent No.3 for promotion. After the directions were issued by the Supreme Court in **Orissa Lift Irrigation Corporation (Supra)**, other employees, who had obtained degrees through distance learning preferred a contempt petition i.e. **Ashok Kumar and others (supra)** wherein they had submitted that the benefits which were granted to the parties in **Orissa Lift Irrigation Corporation (Supra)** be also extended to them. The Supreme Court had clarified that the benefits which were granted in **Orissa Lift Irrigation Corporation (Supra)** were to protect the advantages which had already been gained/acquired at that time, and were not meant to grant additional benefits which were not there at that time. The relevant extract is reproduced hereunder:-

*“10. It was, therefore, clear that the candidates who, on the strength of such **Degrees awarded through Distance Education Mode**, had attained a particular level in their career or were enjoying certain benefits as on the date of the Judgment and if they pass the examination, those*

***benefits would stand restored. If the candidates could clear the examination in the first attempt itself, there would not even be any break in continuous enjoyment of those benefits or facilities. The idea was, candidates should not stand deprived of the status that they were enjoying as on the day of the Judgment provided the candidates could prove their worth and ability.***

***But if, the concerned candidates had not attained any particular status, as on the date when the Judgment was passed, the width of the directions was not to confer any additional advantage which was not even enjoyed as on the date. It was not the idea to hold the candidates to be entitled to certain additional benefits which the candidates were, as a matter of fact, not even enjoying on the date of the judgment. If the degrees stood restored in terms of the directions in the Judgment and the Order, the candidates would certainly be eligible to such entitlements as are available in accordance with law, but “restoration” would only be of those benefits, which they were enjoying as on the date of the Judgment. In short, the intent was to restore status quo ante and not to confer any additional advantage by the Judgment and the Order.***

11. In the present case serious objection has been raised on behalf of Department that the concerned candidates had enrolled themselves in courses leading to Degrees in Engineering through Distance Education Mode without express permission of the Department and/or the Department did not recognise the Degrees in Engineering awarded through Distance Education Mode or that the concerned candidates were not granted any study leave to pursue such courses. If the Degrees were so obtained in violation of the norms and parameters laid down by the concerned Department, the matter assumes completely different complexion. ***The directions issued by this Court in***

*the Judgment and the order never directed to confer such advantages which the candidates were otherwise not enjoying on the date when the Judgment and clarificatory Order were passed. If there was serious infirmity in the Degrees so obtained by the candidates, the matter ought to be sorted out either through representation or through properly instituted challenge in that behalf. If the promotion was not granted and was not being enjoyed as on the day when the judgment was passed, there was no violation of any direction issued by this Court. As is evident, the representations made by the Contempt Petitioner claimed conferral of certain status and benefits which they were not enjoying earlier. If there be any grievance on that front, the entitlement needs to be established in proceedings other than a Contempt Petition.” (Emphasis Supplied)*

9. In any event, respondent No.3 is not qualified for entry into Group A service or promotion to the post of Executive Engineer as it has been specified in Section 6 of the 2010 Act that no degree obtained through distance learning would be acceptable for appointment to the Group A service. The 2010 Act is stated to be under challenge but it has not been set aside. There is no interim order staying the operation of the Act. The Act is in force as on date and Respondent No.3 does not possess the requisite qualification for promotion to the post of Executive Engineer.

10. I also do not find any merit in the contention of the learned senior counsel for respondent No.3 that respondent No.3 has already been promoted and subsequently retired and, therefore, the benefit he had derived be not disturbed. The judgments relied upon by the learned counsel for the respondents are distinguishable and not applicable to the facts of the instant

case. The cases of **Ram Raj Sharma (supra)** and **Tara Chand (supra)** pertain to recovery from the retired employee and it was in such circumstances, that the Coordinate Benches held that the benefit already granted and the payment made be not recovered. In the case of **Parveen Gera (supra)**, the question involved was whether ranking of eligible Junior Engineers on the basis of experience gathered after the qualification of AMIE has to be taken into account or the service even prior to the qualification was to be taken into consideration. Some of the respondents had expired, retired or had taken voluntarily retirement and the only remaining respondent was to retire shortly and it was in such circumstances, the Supreme Court had decided not to allow any recovery from any of the respondents therein or to revert the only respondent, who was in service. There was no issue with regard to the essential qualifications of the respondent therein.

11. In the instant case, the question about the essential qualification for promotion goes to the root of the controversy at hand. Respondent No.3 had obtained the degree of Engineering from distance education while he was in service. It is not the case of respondent No.3 that he had obtained study leave and had undertaken the course in the physical mode. It is difficult to accept that an Engineering degree through distance mode of education would be at par with a course undertaken through physical mode. In the study of Engineering, theoretical concepts are taught which are then put in practice through practical training. A person who has not physically attended the classes/course and has not undertaken practical training cannot be said to be an Engineer. If we accept such degrees obtained through distant learning, the day is not far when there will be MBBS courses being conducted through distant mode of learning which

would have disastrous consequences. I shudder to think whether any patient would like to be treated by a doctor who has obtained MBBS degree through distant learning. The functions of Engineers are of significant importance as they are involved in building the nation's infrastructure and any laxity/incompetence due to lack of knowledge would not only endanger the precious lives of citizens, but also cost the State exchequer dearly.

12. Consequently, the petition is allowed and promotion of respondent No.3 is set aside.

**(ANUPINDER SINGH GREWAL)**  
**JUDGE**

**May 27, 2022**  
**A.Kaundal**

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|----------------------------|---|--------|
| Whether speaking/ reasoned | : | Yes/No |
| Whether Reportable         | : | Yes/No |